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Agenda item 3

REVIEW OF THE WORK OF THE SUB-COMMISSION

Report of an open-ended Working Group established pursuant to Sub-Commission decision 1989/104

Chairman-Rapporteur: Mr. Theo van Boven

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INTRODUCTION

1. By decision 1989/104, the Sub-Commission decided to establish, at the beginning of its forty-second session, a sessional working group of five of its members, appointed by the various regional groups and open to the participation of other members of the Sub-Commission, to prepare an overview and an analysis of the suggestions and proposals which have been made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights as discussed under item 6 of its agenda, taking also into account the functions and duties of the Commission on Human Rights in the matter.

2. The Sub-Commission further decided to request the same sessional working group, in preparing the overview and analysis, to submit to the Sub-Commission its views and recommendations as to the possible advantages and disadvantages of the various suggestions and proposals referred to above, and to present its findings in the light of the deliberations of the Sub-Commission at its forty-second session under the agenda item relating to the question of the violations of human rights and fundamental freedoms.

3. In order to facilitate the implementation of the above two paragraphs, the Sub-Commission also decided to continue discussing the agenda item entitled "Review of the work of the Sub-Commission" at its forty-second session in 1990, expressing the view that the item relating to the question of the violations of human rights and fundamental freedoms should be taken up at an early stage of that session.

4. The first session of the Working Group was held during the forty-second session of the Sub-Commission, in August 1990. By decision 1990/125, the Sub-Commission decided, without a vote, to take note of the report of the Working Group (E/CN.4/Sub.2/1990/14) and that it should continue its work at the forty-third session of the Sub-Commission.

5. The Commission on Human Rights, in its resolutions 1990/64 of 7 March 1990 and 1991/56 of 6 March 1991, invited the Sub-Commission to instruct this working group to include in its deliberations an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Commission.

I. ORGANIZATION OF THE SESSION

6. Upon the nominations made by various regional groups, the Sub-Commission had approved the following composition of the Working Group: Mrs. F.Z. Ksentini, Mr. S. Chernichenko, Mr. T. van Boven, Mr. V. Saboia and Mr. R. Sachar. The Working Group held two meetings on 8 and 9 August 1991. The Working Group adopted its report on 22 August 1991. At its 1st meeting, held on 8 August 1991, Mr. Theo van Boven was re-elected Chairman-Rapporteur by acclamation.

7. The following documents were available to members of the Working Group:

Report of the Working Group on its 1990 session (E/CN.4/Sub.2/1990/14);

Working paper submitted by Mr. Chernichenko (E/CN.4/Sub.2/1990/56);

Working paper submitted by Mr. van Boven (E/CN.4/Sub.2/1990/57);

Working paper presented by Mr. van Boven and Mr. Eide (E/CN.4/Sub.2/1989/47);

Working paper presented by Mr. Chernichenko and Mr. Treat (E/CN.4/Sub.2/1989/51);

Working paper submitted by Mr. Chernichenko (E/CN.4/Sub.2/1989/55);

Working paper presented by Mr. van Boven and Mr. Eide (E/CN.4/Sub.2/1988/43);

Written communication submitted by NGOs (E/CN.4/Sub.2/1991/NGO/21);

Note by the Secretary-General containing an informal paper on the role and competence of the Sub-Commission (E/CN.4/Sub.2/1982/3);

Note by the Secretariat containing a list of studies established in accordance with decision 1989/103 of the Sub-Commission (E/CN.4/Sub.2/1990/2).

The Working Group also noted an informal working paper prepared by Mr. Ribot Hatano, containing a draft set of rules of procedure for the Sub-Commission.

8. The meetings of the Working Group were open to all members of the Sub-Commission as well as to observers from States and representatives of intergovernmental and non-governmental organizations.

II. GENERAL DEBATE

9. During the brief general debate, it was recalled that pursuant to the directives contained in Sub-Commission decision 1989/104, the Working Group was entrusted with two principal tasks:

(a) To prepare an overview and an analysis of suggestions and proposals made in order to enable the Sub-Commission to better discharge its responsibilities in dealing with violations of human rights;

(b) To submit to the Sub-Commission its views and recommendations and to present its findings.

10. The Working Group also took into account the provisions of paragraph 11 of resolution 1990/64 and paragraph 13 of resolution 1991/56 of the Commission on Human Rights by which the mandate of the Working Group had been extended to include an examination of ways and means to avoid any proliferation of studies as well as of draft resolutions or decisions on issues already being dealt with by the Sub-Commission. In this connection, the Working Group's attention was also drawn to Sub-Commission decision 1989/103 on the list of studies already undertaken and the ways and means of rationalizing proposals for studies and the possibility to drawing up a medium-term programme.

11. It was also recalled that by its resolution 1991/56, the Commission recommended that the Sub-Commission should restrict the number of studies undertaken at any one time and called upon the Sub-Commission to consider elaborating procedures with a view to ensuring the earliest possible completion of studies.

12. When discussing the matters relating to its programme of work, the Working Group heard a number of proposals aiming at establishing certain priorities in its activities. While some experts were of the opinion that the Working Group should continue its discussion on matters relating to the preparation of a global report, the prevailing view was that it would be more productive to devote this session to consideration of several other issues, including the questions of preparation of studies, rationalization of the Sub-Commission's work and its agenda, as well as of resolutions and decisions. A set of informal proposals relating mainly to various aspects of the Sub-Commission's work in the area of preparing and updating reports and studies was suggested by one of the experts. The Working Group accepted these proposals as a framework for its discussion at the present session. A summary of the discussion is included in section III below.

III. CONSIDERATION OF PROPOSALS RELATING TO THE PREPARATION OF STUDIES

Preparatory document

13. With regard to the proposal to institutionalize the preparation, without financial implications, of a feasibility study before taking decision on the elaboration of any new report, many experts agreed on the need for some sort of a preliminary evaluation of the advisability or necessity of an eventual study. However, different views were expressed with regard to the concept of feasibility study.

14. Some experts opposed the term "feasibility" stating that it was not clear enough and could be interpreted differently. Besides, it felt that what was feasible was not necessarily advisable. Another wording was proposed, like "outline" or "preparatory document". The view was expressed that such concise preparatory document of not more than two or three pages could be drafted during the same session of the Sub-Commission at which the proposal for a study was put forward. It was understood that the person who draws up the preparatory document need not necessarily be the same expert who might be appointed a Special Rapporteur.

15. It was also the understanding of many experts that no feasibility study would be needed when a request for a new study came from the Economic and Social Council or another superior body. It was also pointed out that certain flexibility was needed in taking decisions regarding the institutionalization of feasibility studies, which should be regarded rather as a general rule than as a strict prescription allowing no exceptions.

Commentators

16. Another proposal discussed in connection with the carrying out of studies was the designation of "commentators" entrusted with drawing attention to those aspects of the studies which warranted special attention. While some experts thought that such commentators could be very useful with a view to highlighting the main issues and thus making the work of the Sub-Commission more efficient and substantive, others felt that this proposal did not commend itself since the role of such commentators could be played by all 26 members of the Sub-Commission. Also, the question was raised in which phase of a study the commentators would be most helpful (preliminary, progress or final). It was generally felt that, in case the idea of commentators were to be introduced, it should only apply in full agreement with the Special Rapporteur of the study under consideration.

Updating annual lists of studies

17. Another proposal was to institutionalize the preparation and updating of annual lists of studies, both those in the course of preparation and those completed. Many experts agreed that it was essential to have such a list updated regularly. It was suggested in this connection that the Secretary-General could also inform annually the Sub-Commission on whether there had been any practical follow-up given to any of the proposals and recommendations formulated in the study. In this connection, the view was expressed that such a request could constitute a considerable additional workload for the Secretariat. Generally, it was felt that this proposed measure could enhance the work of the Sub-Commission.

Completion of previous study before new study is undertaken

18. According to another proposal, no new study should be started without ensuring that the previous study had been terminated. Some experts argued that it was necessary to determine what should be considered as "previous study" and "new study". Distinction was drawn between "previous study" and "previously authorized study". It was also indicated that the Sub-Commission was in need of more precise guidelines with regard to the process of initiating a new study.

19. It was also observed that there should remain a certain degree of flexibility on this issue. The Sub-Commission should observe self-control in proposing new studies and be mindful of the concerns of the Commission on Human Rights regarding the problem of proliferation of studies. It was also felt that a distinction should be made between an entirely new subject and a subject which had already been considered by the Sub-Commission elsewhere. It was added that the Sub-Commission should be free to explore new areas and should have an appropriate procedure for that purpose. Whenever faced with

proposals for new studies, the need was stressed for appropriate consultations to be held among the members of the Sub-Commission in order to establish priorities before decisions are taken on such new studies.

Selection of Special Rapporteurs

20. It was observed that the Sub-Commission should pay due attention to the principle of a fair geographical distribution of special rapporteurs. It was also observed that special expertise and knowledge of particular subjects should be taken into account. At the same time, it was pointed out that certain subjects should not become the domain of experts with a special background. It was further noted that the tendency to entrust studies to alternates could affect the principle of geographical distribution.

21. One speaker referred to the statistics showing that the distribution of studies entrusted to experts belonging to different geographical regions had been nearly even. Other experts felt that since the imbalance was not so enormous, the need for pluralism and better grographical distribution could also be realized through the practice of preparation of reports jointly by two or more experts. It was also pointed out that the interdisciplinary approach should be encouraged.

22. A view was expressed that not all the experts had equal financial and research facilities at their disposal, and therefore the Secretariat should be able to better assist some experts in certain cases. It was stated that no expert should be precluded from becoming a special rapporteur for financial reasons.

Publicity

23. Another proposal discussed was to improve the publicity given to studies, notably by issuing a pamphlet containing a list of completed studies together with their summaries, many experts agreed that the Sub-Commission should pay more attention to this question. Regret was expressed at the fact that many of the most interesting and still useful reports and studies prepared under the aegis of the Sub-Commission were no longer available in libraries and virtually forgotten. Some experts referred to the United Nations human rights information campaign as a means to give due publicity to the studies. It was also observed that the electronic data bases should be widely used for the recording and distribution of studies.

Follow-up mechanism

24. In connection with the proposal that a mechanism for follow-up of recommendations be established, it was suggested that the Secretariat should be entrusted with the task of preparing annually a short note regarding the follow-up which had been given to studies. This must enable the Sub-Commission to monitor the follow-up of all recommendations contained in reports and studies.

Updating of studies

25. Another proposal related to the question of updating, annually or on a periodic basis, of reports which imply a follow-up. Although this seemed to be a sound idea, the Sub-Commission should remain realistic and not do too much bureaucratic work. It was also felt that it would be enough to establish the principle according to which the possibility of updating should be considered from time to time. At the same time, there were obviously certain subjects which by their nature needed permanent updating, like the studies and lists of states of emergency, transnational corporations assisting South Africa, etc. It was also mentioned that, as far as the Secretariat was concerned, it needed legislative authority from the Economic and Social Council or the Commission on Human Rights for any follow-up exercise.

Joint preparation of studies

26. With regard to the proposal that the practice of preparation of studies by two or three experts should be expanded, it was noted that for the time being there were only a few cases of such a joint activity. Many experts agreed that this practice should be further explored and continued, especially taking into account that it also provides good possibilities for better geographical distribution among rapporteurs. According to another view, commentators designated for a study could with time become co-rapporteurs, notably in view of the preparation of the final report.

Financial implications

27. The Working Group discussed the question of financial implications and the assistance to be rendered by the Secretariat to special rapporteurs. The Group received in this connection information on the policies and practices of the Secretariat. The wish was expressed by some experts that, once a study was completed, the Secretariat should make available information on the actual expenses made in connection with the study as compared with the indicative figures which were included in the statement(s) of financial implications.

IV. RATIONALIZATION OF THE SUB-COMMISSION'S WORK AND AGENDA

28. The Working Group had a preliminary discussion on the rationalization of the Sub-Commission's work and agenda. It took into account a written communication submitted by a number of non-governmental organizations under item 3 (E/CN.4/Sub.2/1991/NGO/21) and paid particular attention to the suggested regrouping of items on the Sub-Commission's agenda. Many speakers noted with appreciation the efforts made by non-governmental organizations in this matter; at the same time they felt that many aspects regarding the organization of the Sub-Commission's work and agenda warranted further reflection and discussion in the future.

V. OTHER MATTERS

29. The Working Group noted with interest the readiness of the outgoing Chairman of the Sub-Commission to receive, analyse and communicate with members of the Sub-Commission in the period before the next session of the Sub-Commission suggestions and proposals concerning the methods of work. The Working Group also noted with interest that in the same period Mr. R. Hatano, member of the Sub-Commission, will consult other members of the Sub-Commission concerning the rules of procedure.

VI. CONCLUSIONS AND RECOMMENDATIONS

A. Issues relating to studies

30. Before the Sub-Commission proposes to its parent bodies to authorize the carrying out of a new study, it should request one of its members to draft a preparatory document which should contain an evaluation on the advisability of an eventual study as well as a brief outline of the work programme.

31. As a general rule, no proposal will be made for the authorization of a new study, unless a previously authorized study has been completed. A ceiling may be set as to the number of studies under preparation.

32. In cases when proposals for new studies are being made, consultations among members of the Sub-Commission should be held in order to establish priorities before decisions are taken on such new studies.

33. In the selection of Special Rapporteurs, the Sub-Commission should pay due attention to the principle of fair geographical distribution of Special Rapporteurs. Such factors as special expertise and knowledge of particular subjects should be also taken into account. Attention should also be given to the possibility of appointing one or more joint rapporteurs or co-rapporteurs. Particular themes should not become the domain of experts with a special background.

34. If Special Rapporteurs so wish, one or more experts of the Sub-Commission may be requested to function as commentators who would highlight main issues and raise important questions in the course of the examination of studies by the Sub-Commission.

35. If during the stages of the preparation of a study, it becomes likely that, in the opinion of the Special Rapporteur, the completion of the study would require more than three years after it had been authorized by the parent bodies, the Rapporteur should furnish reasons and explanations.

36. The Secretariat should annually prepare an up-dated list of studies completed and studies under preparation. The Secretariat should also annually prepare a brief note giving indications to what extent follow-up has been given to recommendations contained in studies which are completed and finally examined by the Sub-Commission.

37. Due publicity and adequate distribution should be given to studies. Consideration should be given to issuing periodically a pamphlet containing a list of completed studies together with their summaries. In this respect, maximum use should be made of the facilities and the means of the United Nations human rights information campaign.

B. Other issues

38. The Working Group should continue to carry out its tasks at the next session(s) of the Sub-Commission in order to come up with recommendations on such matters as rationalization of the Sub-Commission's work and agenda, including the issue of its rules of procedure, means and methods of discharging responsibilities in dealing with violations of human rights, the role of alternates and the possibility of drawing up a medium-term programme.